

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GREGORY L. HUGHES,

Plaintiff,

v.

STATE OF WASHINGTON, *et al.*,

Defendants.

Case No. C10-5284RBL/JRC

REPORT AND
RECOMMENDATION

NOTED FOR:
August 27, 2010

This Civil Rights Action filed pursuant to 42 U.S.C. § 1983 has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local Magistrate Judges' Rules MJR 1, MJR 3, and MJR 4.

The court recommends this action be dismissed for failure to state a claim with the dismissal counting as a strike pursuant to 28 U.S.C. 1925 (g). The plaintiff in this action contends he was transferred to Western State Hospital for evaluation in connection with a criminal case (Dkt. # 7). He alleges he was humiliated by the transfer and seeks monetary damages (Dkt. # 7). He names as defendants the state, the prosecuting attorney, and plaintiff's defense counsel (Dkt. # 7). On June 9, 2010, the court entered an order to show cause because under the Eleventh Amendment the state is immune from damages; defense counsel does not act under color of state law; and the prosecutor would enjoy immunity from suit for an action of this

1 nature (Dkt. # 8). The plaintiff was directed to file an amended complaint curing the defects
2 noted. Plaintiff then filed a letter reiterating his claims and expanding his allegations against his
3 defense counsel (Dkt. # 9).

4 In order to state a claim under 42 U.S.C. § 1983, a complaint must allege that (1) the
5 conduct complained of was committed by a person acting under color of state law and that (2)
6 the conduct deprived a person of a right, privilege, or immunity secured by the Constitution or
7 laws of the United States. Parratt v. Taylor, 451 U.S. 527, 535 (1981), *overruled on other*
8 *grounds*, Daniels v. Williams, 474 U.S. 327 (1986). Section 1983 is the appropriate avenue to
9 remedy an alleged wrong only if both of these elements are present. Haygood v. Younger, 769
10 F.2d 1350, 1354 (9th Cir. 1985), *cert. denied*, 478 U.S. 1020 (1986).

12 The State of Washington is not a proper defendant to claims seeking monetary damages
13 in federal court. States enjoy Eleventh Amendment immunity from such lawsuits. Quern v.
14 Jordan, 440 U.S. 332, 344-45 (1979). Further, a state is not “person” within the meaning of 42
15 U.S.C. § 1983. Will v. Michigan Dep't of State Police, 491 U.S. 58, 65-66 (1989).

17 Plaintiff's defense counsel -- even court appointed counsel -- does not act under color of
18 state law and is therefore not a proper defendant. Polk County v. Dodson, 454 U.S. 312, 317-18
19 (1981).

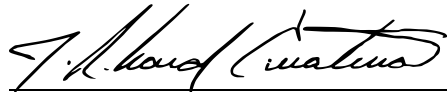
20 Prosecutors in the performance of their official duties enjoy prosecutorial immunity from
21 suit. A prosecuting attorney who initiates and prosecutes a criminal action is immune from a civil
22 suit for money damages brought under 42 U.S.C. S 1983. Imbler v. Pachtman, 424 U.S. 409,
23 431 (1976). Absolute immunity applies when the challenged activity is intimately associated
24 with the judicial phase of the criminal process. *Id.* at 430. Prosecutors are absolutely immune for
25 quasi-judicial activities taken within the scope of their authority. Ashelman v. Pope, 793 F.2d
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1 1072, 1078 (9th Cir.1986). Neither a conspiracy nor a personal interest will pierce a prosecutor's
2 absolute immunity. *Id.* Prosecutorial immunity extends to the process of plea bargaining as an
3 integral part of the judicial process. *Miller v. Barilla*, 549 F.2d 648, 649 n. 3 (9th Cir. 1977).

4 Thus, none of the named defendants in this action are proper defendants. Based on the
5 forgoing, the court recommends this action be DISMISSED WITH PREJUDICE for failure to
6 state a claim. This dismissal would count as a strike pursuant to 28 U.S.C. 1915 (g).

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8 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have
9 fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P.
10 6. Failure to file objections will result in a waiver of those objections for purposes of appeal.
11 *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the
12 clerk is directed to set the matter for consideration on August 27, 2010, as noted in the caption.

13 Dated this 5th day of August, 2010.

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17 J. Richard Creatura
18 United States Magistrate Judge
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